

COUNTERPART

No. 6 of 15

LEASE ASSIGNMENT
AND AGREEMENT

RECORDATION NO. 6882-C
Filed & Recorded
MAR 19 1973 - 11 30 AM
INTERSTATE COMMERCE COMMISSION

Dated as of February 1, 1973

between

THE FIRST PENNSYLVANIA BANKING
AND TRUST COMPANY,

as Trustee

and

MERCANTILE SAFE DEPOSIT
& TRUST COMPANY

as Agent

LEASE ASSIGNMENT AND AGREEMENT dated as of February 1, 1973, by and between THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY (hereinafter called the Vendee), as Trustee under a Trust Agreement dated as of February 1, 1973, and MERCANTILE SAFE DEPOSIT & TRUST COMPANY, as Agent (hereinafter called the Agent) pursuant to the Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) among the Agent, Chicago and North Western Transportation Company (hereinafter called the Lessee) and the parties named in Schedule A thereto (hereinafter called the Investors).

The Vendee and the Lessee have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Vendee to the Lessee of the units of railroad equipment (hereinafter called the Units) listed in Schedule A to the Lease.

The Vendee and ACF Industries, Inc. (hereinafter called the Builder) have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement), providing for the purchase by the Vendee from the Builder of the units of railroad equipment listed in Annex A to the Conditional Sale Agreement (hereinafter called the Equipment).

The Agent proposes to acquire, pursuant to an agreement and assignment substantially in the form attached to the Conditional Sale Agreement as Exhibit B to be dated as of the date hereof (hereinafter called the Assignment), the right, security title and interest of the Builder under the Conditional Sale Agreement in the units of the Equipment.

The Vendee desires to induce the Agent to enter into the Assignment and to further secure the performance by the Vendee of its obligations (hereinafter called the Liabilities) under the Conditional Sale Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

1. As security for the payment and performance of the Liabilities, the Vendee hereby assigns, transfers, and sets over unto the Agent all the Vendee's right, title and interests, as lessor under the Lease, together with all rights, powers and privileges, and other benefits of the

Vendee as lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals and profits and other sums payable to or receivable by the Vendee under or pursuant to the provisions of the Lease and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default under the Lease, and to do any and all other things whatsoever which the Vendee, as lessor, is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Company hereby irrevocably authorizes and empowers the Agent in its own name, or in the name of its nominee, or in the name of the Vendee or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Vendee is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions of the Lease.

2. The assignment made hereby is executed only as security, and, therefore, the execution and delivery of this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify, the liability of the Vendee under the Lease, it being understood and agreed that notwithstanding such assignment, or any subsequent assignment, all obligations of the Vendee to the Lessee under the Lease shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Vendee.

3. The Vendee covenants and agrees that it will perform all of its obligations to be performed under the terms of the Lease, and hereby irrevocably authorizes and empowers the Agent, in its own name, or in the name of its nominee, or in the name of the Vendee, as its attorney, on the happening of any failure by the Vendee, to perform, or cause to be performed, any such obligation, all at the Vendee's expense.

4. Upon the full discharge and satisfaction of the Liabilities, the assignment made hereby and all rights herein assigned to the Agent shall cease and terminate, and all estate, right, title and interest of the Agent in and to the Lease shall revert to the Vendee.

5. The Vendee warrants and covenants that (a) the execution and delivery by the Vendee of the Conditional Sale Agreement, the Lease and this Lease Assignment and Agreement have each been duly authorized, and the Conditional Sale Agreement, the Lease, and this Lease Assignment and Agreement

are and will remain the valid and binding obligations of the Vendee in accordance with their terms; (b) the Vendee has not executed any other assignment of the Lease and its right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements or encumbrances (except this Assignment) created or suffered by any act or omission on the part of the Vendee (other than any act or omission in respect of which the Lessee has assumed responsibility under the Lease), and the Vendee has received no advance rental payments under the Lease; (c) notwithstanding this assignment the Vendee will conform and comply with each and all of the covenants and conditions in the Lease set forth to be complied with by it and (d) to the knowledge of the Vendee, it has performed all obligations on its part to be performed under the Lease on or prior to the date hereof and there has not occurred on or prior to the date hereof any Event of Default (as that term is defined in the Lease). Except as expressly set forth in the Conditional Sale Agreement, the Vendee has not made any representations or warranties to the Agent or the Investors with respect to the transactions contemplated hereby and none shall be implied.

6. The Vendee covenants and agrees with the Agent that in any suit, proceeding or action brought by the Agent under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of such Lease, the Vendee will save, indemnify and keep the Agent harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee thereunder or its successors, arising out of a breach by the Vendee of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Vendee. Any and all such obligations of the Vendee shall be and remain enforceable against and only against the Vendee and shall not be enforceable against the Agent or any party or parties in whom any of the rights of the Vendee under the Lease shall vest by reason of the successive assignments or transfers.

7. The Vendee will from time to time execute all such financing statements and supplemental instruments as the Agent may from time to time reasonably request in order to confirm or further assure the assignment made hereby and the provisions hereof.

8. The Agent may assign all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Lessee thereunder, subject to the requirements of Paragraph 15 of the Finance Agreement. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

9. The Vendee agrees that it will not, without the prior written consent of the Agent, enter into any agreement amending, modifying or terminating the Lease and that any attempted amendment, modification or termination thereof without such consent shall be void.

10. This Lease Assignment and Agreement shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

11. This Lease Assignment and Agreement shall be binding upon and inure to the benefit of the parties hereto and the Investors and their respective successors and assigns.

12. The Vendee shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Agent at Two Hopkins Plaza, P. O. Box 2258, Baltimore, Maryland 21203, Attention: Thomas E. Jones, or at such other address as the Agent shall designate.

IN WITNESS WHEREOF, the Vendee has caused this instrument to be executed in its corporate name pursuant to due corporate authority and by duly authorized officers and its corporate seal to be hereunto affixed and duly attested as of the date first above written.

THE FIRST PENNSYLVANIA BANKING
AND TRUST COMPANY, as Trustee

By Wm. Kray
W. M. KRAY
VICE PRESIDENT

Attest:

D. P. Dorrian
D. P. DORRIAN
ASSISTANT SECRETARY

ACCEPTED:

MERCANTILE SAFE DEPOSIT
& TRUST COMPANY

By R. L. Ziemah
Vice President

ACKNOWLEDGED:

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

By J. M. Brittle
Vice President

COMMONWEALTH OF PENNSYLVANIA)
) SS.
COUNTY OF PHILADELPHIA)

On this 13th day of March, 1973, before me personally appeared W. H. Kray, to me personally known, who, being by me duly sworn, says that he is Vice President of THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elizabeth J. Shedd
Notary Public

[Notarial Seal]

My Commission Expires March 1, 1976.